

AO 88 (Rev. 1/94) Subpoena in a Civil Case

Issued by the
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EASTERN CONTRACTORS, INC.,
Plaintiff,

v.

CITY OF WORCESTER and
THOMAS R. HOOVER, City Manager, and
HEERY INTERNATIONAL INC., and
THOMAS A ELLIS
Defendants,

SUBPOENA IN A CIVIL CASE

CASE NUMBER: ¹ 03CV-12216MLW

TO: Flansburgh Associates, Inc.
77 North Washington Street
Boston, MA 02114

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION Vena, Riley, Deptula LLP 250 Summer Street, 2 nd Floor, Boston, MA 02210	DATE AND TIME February 11, 2005 at 10:00 a.m.
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☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):
SEE ATTACHED EXHIBIT A

PLACE Vena, Riley, Deptula LLP 250 Summer Street, 2 nd Floor, Boston, MA 02210	DATE AND TIME February 11, 2005 at 10:00 a.m.
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☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
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ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Sabatino F. Leo, Esq., Attorney for Plaintiff	January 14 th , 2005 Vena Riley Deptula LLP, 250 Summer Street, 2 nd Floor Boston, MA 02210 (617) 951-2400
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(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

¹ If action is pending in district other than district of issuance, state district under case number.

UNITED STATES DISTRICT COURT OF MASSACHUSETTS

Civil Action No.: 03CV-12216MLW

EASTERN CONTRACTORS, INC.,)
Plaintiff)
)
V.)
)
CITY OF WORCESTER and)
THOMAS R. HOOVER,)
City Manager, and)
HEERY INTERNATIONAL INC.,)
and THOMAS E. ELLIS, JR.)
Defendants)

NOTICE OF TAKING 30(b)(6) DEPOSITION

TO: Warren D. Hutchison, Esquire
Donovan Hatem LLP
Two Seaport Lane
Boston, MA 02210

Donald Rider, Esquire
City of Worcester Law Department
City Hall, Room 301
Worcester, MA 01608

Please take notice that, commencing at 10:00 a.m. on Friday February 11, 2005, at the offices of Vena, Riley, Deptula, LLP, 250 Summer Street, 2nd Floor, Boston, MA, the Plaintiff in this action, Eastern Contractors Inc., by its attorneys, will take the deposition upon oral examination of Flansburgh Associates, Inc. by one or more of its members, officers or employees to be designated by Flansburgh Associates, Inc. pursuant to the Federal Rules of Civil Procedure. The designee(s) is(are) requested to be the most knowledgeable person(s) concerning each topic of examination. The designee(s) should

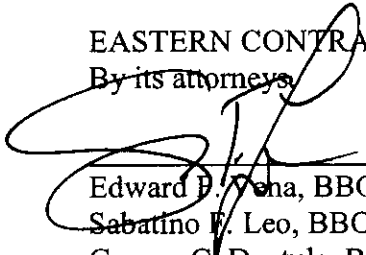
be prepared to testify to the topics listed in Exhibit A attached hereto. The designee(s) is further requested to bring all documents listed in Exhibit A attached hereto.

The deposition shall take place before a Notary Public or before some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed.

You are invited to attend and cross-examine.

EASTERN CONTRACTORS, INC.

By its attorneys



Edward P. Vena, BBO No.: 508660
Sabatino F. Leo, BBO No.: 642302
George C. Deptula, BBO No. 120820
Vena, Riley, Deptula, LLP
250 Summer Street, 2nd Floor
Boston, MA 02210
(617) 951-2400



Edward J. Quinlan, BBO No.: 409060
Quinlan & Sadowski, P.C.
11 Vanderbilt Avenue, Suite 250
Norwood, MA 02062
(781)440-9909

Dated:

January 14, 2005

EXHIBIT A
DEFINITIONS AND INSTRUCTIONS

1. The terms "document" or "documents" mean and shall include the original and any non-identical copy of all papers, writings, agreements, financial statements, invoices, recordings, proposals, drawings, summaries, graphs, files, brochures, pamphlets, circulars, records, ledgers, journals, tax returns and schedules, diaries, calendars, studies, books, notebooks, work sheets, charts, bulletins, forms, indices, tapes, cards, cables statements, lists, tabulations, computer printouts, computer disks and/or diskettes, data processing input and output, microfilms, periodicals, court papers, affidavits, catalogs, instructions, work papers, surveys, orders, vouchers, data sheets, negatives, projections, analyses, magazines, articles, literature, newspapers, notes, minutes, letters, telegrams, memoranda, reports, photographs, transcripts, photographic and retrievable data (whether encarded, taped or coded electrostatically, electromagnetically or otherwise, and all other documents or materials of any nature whatsoever, together with any drafts thereof, attachments thereto or enclosures therewith, in the possession, custody or control of a party.
2. "Concerning" or "relating to" as used herein, shall include but not be limited to: referring to, relating to, embodying, connected with, commenting on, responding to, showing, describing, analyzing, reflecting, constituting, illustrating, depicting, summarizing, mentioning, recording, evidencing, supporting, contradicting or rebutting, directly or by inference.
3. The term "Worcester" refers to the Defendant, City of Worcester and any of its representatives, agents, employees, principals, officers, subsidiaries, parent companies, related entities, and attorneys.
4. The term "Lawrence Project" refers to the public building project known as the new Lawrence High School Project, Lawrence, Massachusetts.
5. The term "Hoover" refers to the Defendant, Thomas R. Hoover, City Manager, City of Worcester.
6. The term "Heery" refers to the Defendant, Heery International Inc., and any of its representatives, agents, employees, principals, associates, parent companies, subsidiaries, affiliates, and attorneys, including any of its consultants, subcontractors or others performing work or services for Heery International, Inc.
7. The term "Ellis" refers to the Defendant, Thomas E. Ellis.
8. The term "Eastern" refers to the Plaintiff, Eastern Contractors, Inc.
9. The term "Flansburgh" refers to Flansburgh Associates, Inc., and any of its representatives, agents, employees, principals, associates, parent companies, subsidiaries, affiliates, and attorneys, including any of its consultants, subcontractors or others performing work or services for Flansburgh Associates, Inc.

10. The term "Project" shall refer to the design bidding and construction of the Worcester Vocational High School, which is the subject of this action.
11. The term "Heery Report" refers to the March 19, 2003, letter to Jill C. Dagilis from Thomas E. Ellis, Jr and any investigation related thereto.
12. The term "action" or "actions" means any investigation, meeting, correspondence, communication, request, demand, computer or other inquiry or entry, research or any other activity.
13. The term "communication" means any oral or written utterance, notation, statement, conversation and discussion of any nature and any non-verbal behavior included as part of, or constituting a separate communication, also including email or computer entries

DOCUMENTS REQUESTED

1. Any and all documents which constitute or evidence pre-qualification investigations, investigation of qualifications, investigation of references and/or any other inquiries regarding Eastern's bid on the Lawrence Project.
2. Any and all documents which constitute or evidence any and all communications to include but not be limited to telephone and/or email transmissions, by and/or between Flansburgh and any other person, party or entity as it relates to any and all prequalification investigations, investigation of qualifications, investigation of references and/or any other inquiries regarding Eastern's bid on the Lawrence Project.
3. Any and all documents which constitute or evidence inter-office, intra-office, internal and/or external memoranda of Flansburgh as it relates to the pre-qualification investigations, investigation of qualifications, investigation of references and/or other inquiries regarding Eastern's bid on the Lawrence Project.
4. Any and all documents used, received, generated and/or created by Flansburgh as it relates to the pre-qualification investigations, investigation of qualifications, investigation of references and/or other inquiries regarding Eastern's bid on the Lawrence Project.
5. Any and all documents which constitute or evidence pre-qualification investigations, investigation of qualifications, investigation of references, and/or any other inquiries regarding Eastern's bid on the Lawrence Project.
6. Any and all files, correspondence, memoranda, reports, summaries, calculations, email transmissions, facsimile transmissions, audio records and/or all records of Jorge M. Cruz, AIA, Senior Associate, relating to any prequalification investigations, investigations of qualifications, investigations of references, and/or any other inquiries regarding Eastern's bid on the Lawrence Project.

7. Any and all documents which constitute or evidence notices, memoranda, agreements, communications, to include but not be limited to telephone communications and email transmissions, by and/or between Flansburgh and any other person party or entity relating to bid submissions on the Lawrence Project.
8. Any and all documents used, received, generated and/or created by Flansburgh during its review of Eastern's bid submission on the Lawrence Project.
9. Any and all documents concerning the selection of any bid, bids or bidders for the Lawrence Project.
10. Any and all documents used, received, generated and/or created by Flansburgh in its drafting of its November 7, 2003 letter to Mr. Wayne Capolupo, Chairman of Lawrence Building Committee, regarding "Eastern Contractors Bid Submission" to include but not be limited to the "City of Worcester letter dated March 26, 2003", "Heery International's letter dated March 19, 2003" and "Macomber's letter dated October 29, 2003."
11. Any and all documents relating to Flansburgh's determination that Eastern was the "lowest responsible and eligible bidder" on the Lawrence Project.
12. Any and all documents contained in or part of any and all files of Jorge M. Cruz, AIA, Senior Associate, relating to the Lawrence Project.
13. All documents concerning any and all communications, of any kind, including but not limited to telephone and email communications, of Jorge M. Cruz, AIA, Senior Associate, relating to the Lawrence Project, and particularly relating to Eastern.
14. Any and all documents which constitute or evidence the Heery Report, including but not limited to all files, correspondence, memoranda, reports, summaries, calculations, email transmissions, facsimile transmissions, audio records and/or all records.
15. Any and all document which constitute or evidence all files, of any kind, of Flansburgh or any representative of same, concerning the Heery Report, to include but not be limited to, files, correspondence, memoranda, reports, summaries, calculations, email transmissions, facsimile transmissions, audio records and/or all records.
16. Any and all documents, of any kind, related to critiques or criticisms of Eastern in the Heery Report to include but not be limited to, files, correspondence, memoranda, reports, summaries, calculations, email transmissions, facsimile transmissions, audio records and/or all records.

TOPICS OF INQUIRY

1. All facts, actions and/or communications concerning any and all documents set forth in the preceding Documents Requested attached hereto.
2. All facts, actions and/or communications concerning all communications regarding Flansburgh's review of the contents of the Heery Report.
3. All facts, actions and/or communications concerning Flansburgh's statement in its November 7, 2003 letter to Mr. Wayne Capolupo, Chairman of Lawrence Building Committee that "Eastern Contractors Inc. is the lowest responsible and eligible bidder."
4. All facts, actions and/or communications concerning Flansburgh's statement in its November 7, 2003 letter to Mr. Wayne Capolupo, Chairman of Lawrence Building Committee that "the issues outlined in the City of Worcester letter and Heery International letter have been adequately resolved with the issuance of Eastern's current Certificate of Eligibility."
5. All facts, actions and/or communications concerning the knowledge and state of mind of Jorge M. Cruz, AIA, Senior Associate, relating to Flansburgh's decision to award the Lawrence High School project to Eastern.
6. All facts, actions and/or communications concerning Flansburgh's statement in its November 7, 2003 letter to Mr. Wayne Capolupo, Chairman of Lawrence Building Committee that "Eastern Contractors possess the skill, ability, and integrity necessary to faithfully perform the work."
7. All facts, actions and/or communications concerning the role of each individual officer or employee of Flansburgh concerning the investigation of Eastern, to include but not be limited to, the identity of each individual, letters read, reviewed documents, and interviews of owners/architects.